

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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The Authors Guild, Inc., Associational Plaintiff,	:	
Betty Miles, Joseph Goulden, and Jim Bouton,	:	
individually and on behalf of all others similarly	:	
situated,	:	Case No. 05 CV 8136-DC
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
Google Inc.,	:	
	:	
Defendant.	:	
	:	
	:	
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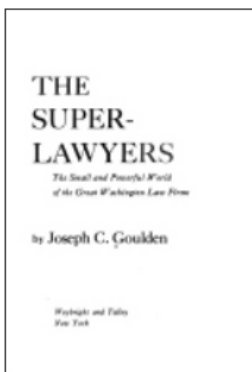
EXHIBIT

2

[PART 1 OF 3]

**TO THE DECLARATION OF MICHAEL J. BONI IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT GOOGLE'S MOTION FOR SUMMARY JUDGMENT**

The Super-lawyers: The Small and Powerful World of the Great Washington Law Firms



Joseph C. Goulden



0 Reviews

Weybright and Talley, 1972 - Law firms - 408 pages

Common terms and phrases

Abe Fortas Acheson Administration airline American antitrust argued Arnold and Porter asked attorney Austern auto bank Banzhaf bill called chairman Clark Clifford client Commission Commissioner Committee Congress Congressional Corcoran corporate counsel Covington and Burling Dean Acheson decision Defense Democratic Dobrivar drug Federal government fees filed foreign former Fortas and Porter hearings hired industry ington Johnson Justice Department Karasik Kennedy law firm Laylin legislation Lloyd Cutler loan lobbyists matter ment million Mudge Rose Nader Nixon Panalba partner Patman Penn Central percent political practice President railroad Ralph Nader Randolph Guthrie regulatory agencies Representative Republican says Secretary Senator Smathers someone staff Stuart Symington subcommittee sugar Supreme Court talk Temko thing Thurman Arnold tion told Tommy Tommy Corcoran Truman Unimed wanted Washington Law Washington Lawyer White House wrote York

From inside the book

83 pages matching **lawyer** in this book

Page 6

change to secure it and shape it to the own purpose. The Washington Lawyer is the man American business depends upon to "subdue . . . and shape" the Federal government.

The Washington Lawyer in recent decades has stepped beyond the attorney's traditional role as legal representative. The

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and the speaker in delivering it. In addition, the lawyer is trained as a skillful gatherer and interpreter of facts. And facts, properly presented and carefully analyzed, provide the rationale for most legislation, the cynics notwithstanding."

The astute lawyer-lobbyist involves himself in a bill from the

Page 314

T Most of the Washington Lawyer's tax work is done in face-to-face conferences with IRS officials, ranging from agent level up to (albeit rarely) the Commissioner of Internal Revenue. Each official has varying authority to settle a dispute; the lawyer must

From inside the book

87 pages matching **lawyers** in this book

Page 9

hundred mark by the time this book reaches print. Covington and Burling, the city's largest firm, grew from eighty-five lawyers in 1960 to the present one hundred thirty. Arnold and Porter went from thirty-five to seventy; Wilmer, Cutler and Pickering from ten to fifty-five. Hays and Hays, from thirteen to twenty.

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The Superlawyers

Page 326

Regardless of the merits of the attack on Cutler, the students succeeded in dramatizing a question that Washington Lawyers—and those elsewhere—had previously discussed only in the most theoretical terms: What is the lawyer's responsibility to society, as opposed to his responsibility to an individual client?

From inside the book

41 pages matching **fact** in this book

Page 196

here, and our president especially has been keeping an eye on you,' and 'Have you ever given any thought as to how long you intend to remain with the Commission?' These might have been very innocent—my friend thought they were implicit offers of a job. Although he wasn't asked to do so—and in fact the facts in

Page 232

it, and he asked for a copy of it. ("Take me a picture of this," he told a secretary.) Then he talked about it. The Federal Reserve Board, he argued, "was never intended to cover loans made by European banks—that's a lot of crap. As a matter of fact, we consulted with the Federal Reserve Board before we made the

Page 378

wise for the oil industry and the power companies to call their attorneys 'public-interest lawyers,' because they can make a strong argument that they in fact *are* public-interest lawyers, the definition being as vague as it is.

"Soon after I went into practice for myself. I was approached

From inside the book

18 pages matching **facts** in this book

Page 75

the expression—and man, did I feel good. It was like being thrown into the creek by your dad to learn to swim; you consume an awful lot of water, but you learn how to swim.

“An interne has to work on people to become a doctor, and he sends some to the graveyard. Well, I sent mine to the state

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use of a hazardous drug when the available facts and the national drug law dictate such action. We believe that the facts show clearly that Panalba presents serious hazards to patients who take it which are not balanced by any benefit to be expected

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and the speaker for gathering in an edition, the lawyer is trained as a skillful gatherer and interpreter of facts. And facts, properly presented and carefully analyzed, provide the rationale for most legislation, the cynics notwithstanding.”

The astute lawyer-lobbyist involves himself in a bill from the

From inside the book

73 pages matching **attorney** in this book

Page 11

ROSE, GUTHRIE AND ALEXANDER. BEFORE 1969 the firm included two other names—those of President Nixon and his Attorney General, John Mitchell. The Phoenix firm of Mitchell's Deputy Attorney General, Richard Kleindienst, suddenly decided it needed an office in Washing-

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agency attorney says the vagueness essential to this sort of bargaining-in-the-dark can backfire: "I had a friend who was assigned to a case involving —. Their attorney peppered him with remarks like 'We sure think you are doing a fine job over

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unique," says Gordon MacDougall, the private transportation attorney. "Any trade association attorney worth his weight watches the national situation and has people contact him immediately when a case is breaking." But private practitioners such as MacDougall are at a disadvantage: "Lawyers as a group

From inside the book

35 pages matching **attorneys** in this book

Page 3

in Washington about which other attorneys dare only dream. At some time in the future Clifford might be emulated, even surpassed; he need not fear duplication. And, finally, the mystique exemplified by Clark Clifford is both blessing and curse for attorneys who practice in the same town with him.

Page 7

mond Garrety, the association's executive director, stresses that these figures are largely guesswork, and for several reasons. Until April 1, 1972, attorneys practicing in Washington courts were not required to join a bar association. Effective that date, the D.C. Court of Appeals required attorneys to join a lawyers' ✓

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The turnover at Federal agencies is brisk. Paul Rand Dixon once estimated that the FTC hired 750 attorneys during his first five years as FTC chairman, just to maintain a 400-man level. The SEC loses about 75 of its 380 attorneys each year to private practice; the FPC, 10 of 70; the FCC, 35 of 200; the CAB, 20

From inside the book

4 pages matching **degree** in this book

Page 73

influence of any kind in Washington. If you want to employ someone who has influence, you will have to go somewhere else. First, because I am not sure what the term 'influence' means, but that is inconsequential; second, because whatever it is, we don't have it

Page 368

got my degree in 1967. Then I joined a public-interest law firm, a very respectable place on LaSalle Street—Devoe, Shader, Mikva,* and Plotkin, it's called. But that wasn't the answer, either. Single legal actions don't really change things; you have to get to the heart of the corporation—the way things are run

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as Presidential adviser, 69, 98-99, 103
reassesses Vietnam position, 106
receives law degree, 73
re-enters private life (1969), 107
relations with John Kennedy in 1960, 91
relations with Lyndon Johnson, 102-103

questioned by congressional subcommittee, 164-168
recruited by Felix Frankfurter for New Deal, 152
retained by Burlington Mills, 172-173
retained by Henry J. Kaiser, 157
retained by Sterling Products Company, 158-159

From inside the book

87 pages matching **case** in this book

Page 31

partners, quickly became the country's expert on the National Recovery Administration, and he drafted numerous Blue Eagle industry codes. (Just as quickly, unfortunately, his specialty evaporated. "When the Supreme Court declared NRA unconstitutional in the sick chicken case," Horskv says. "half of what

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Under Secretary of State, the department's number-two position. Laylin, however, insists that Acheson "had absolutely nothing to do" with Covington and Burling representing Iran and Greece, two nations with whose affairs Acheson dealt intimately in his official capacity. "The Iran case came about this

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of guilt in the decree because "the defendants in this case believe they did not violate the antitrust laws." If such an admission had been required as the price of an agreement, he said, there would have been no decree, and "the case would have to go to trial." The last statement points up the importance the industry at

From inside the book

79 pages matching **court** in this book

Page 121

right to learn . . . what the offense of which he had been convicted was." Arnold, Fortas and Porter chased this cloud through the courts for seven years before the government blushed and gave the men their back pay. And Owen Lattimore, the academic expert on China, hailed into court on the most

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The Lawyer as Magician

Congress is the police court of Washington Law. Despite the

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send me the usual retainers."

To Webster's credit, he made no secret of his dual status as legislator and bank lawyer, because he publicly (and successfully) represented the bank in forty-one cases argued before the United States Supreme Court. But even full disclosure did not

From inside the book

26 pages matching **courts** in this book

Page 61

for one party, you eventually waive it for an. The public interest—what is it? Who can define it?” asks John Sapienza. He defines “public policy” as an act of Congress that has been upheld by the courts. “I don’t recognize the onnipotence of a Federal official, and I have no qualms whatsoever about chal-

Page 121

right to learn . . . what the offense of which he had been convicted was.” Arnold, Fortas and Porter chased this cloud through the courts for seven years before the government blushed and gave the men their back pay. And Owen Lattimore, the academic expert on China, hailed into court on the most

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available in advance . . . And appeals to the courts at every stage: you set a hearing date, they ask a postponement, you deny it, they go to court. They seldom win, but everything stops while it is argued. They try to put in superfluous testimony, the

From inside the book

32 pages matching **judge** in this book

Page 25

THEIR MAIN PARTNERS, EDWARD F. BURLING and Judge J. Harry Covington, were men of totally disparate personality. The austere, taciturn Burling was a man out of an old *Saturday Evening Post* success story. He grew up in rural Eldora, Iowa, where he worked in a grocery store at age eleven, and went on

Page 28

the 1930s, Charles Horsky frequently rode the Pennsylvania Railroad's Congressional train to New York with Judge Covington. "The train would leave Union Station at four-thirty in the afternoon, and on any given chair car Judge Covington would

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Bromley also defended United States Gypsum against an antitrust suit filed in 1940. Thurman Arnold, then the Assistant Attorney General for antitrust matters, knew Bromley's skill at muddling a case and sought to expedite the suit by convening a special three-judge court. He told Bromley, "I'll fix your kite, my

From inside the book

3 pages matching **judges** in this book

Page 28

know at least six people. It was a true education to walk through the train with him. The same thing coming back—constant handshaking.” Knowing government bureau chiefs, and judges, and members of regulatory agencies, is one level of advantage; more important for the firm, however, was Covington’s

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to be associated. Celler has said repeatedly he does not share the income from the “non-Celler” firm, and that he considers his practice to be “active and regular” within the meaning of the ABA code. “In any event,” he says, “my constituents must be the ultimate judges to the quality and character of my perform-

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volvement of Congress in matters affecting the military, Gesell wrote, “the potential conflict between an office in the military and an office in Congress is not inconsequential.” Gesell stopped short of ordering present reservists to resign, for judges historically have not told Congress how to run its business—only ad-

From inside the book

6 pages matching **bench** in this book

Page 25

THE THREE NAME PARTNERS, EDWARD F. BURLING and Judge J. Harry Covington, were men of totally disparate personality. The austere, taciturn Burling was a man out of an old *Saturday Evening Post* success story. He grew up in rural Eldora, Iowa, where he worked in a grocery store at age eleven, and went on

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attorney during Johnson's reign as Senate majority leader, Vice President, and President.

Johnson met Fortas when he was a first-term Congressman hot after public power for his Texas district, and Fortas, as director of the Department of the Interior's division of electric

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front row as Edward Bennett Williams argued a case. "Tom wrote a note and beckoned to a page to come get it and take it up to Justice —, who was sitting on the bench," the lawyer said. "Justice — read it, and looked down at Tom and smiled and nodded. I don't have the slightest idea what it was all about.

From inside the book

49 pages matching **bar** in this book

Page 23

sources seaward of the two-hundred-meter line. The United States government submitted a draft treaty—lawyer Laylin's handiwork, basically—to a United Nations committee in August 1970. On another front, as chairman of a special American Bar Association subcommittee, Laylin is mobilizing bar support

Page 224

bar association luncheon in Tallahassee, Florida. Seeming slowness and congeniality even with strangers—no, *especially* with strangers—are tactical mannerisms sons of the South have used for decades to beguile and disarm unwitting Northerners; a hint of the country yokel, no single word or inflection you can iso-

Page 234

sent his corporation on the East Coast, should he settle there to practice law, and internationally. Pepsi-Cola was in the process of challenging Coca-Cola for what we could call the Soda Pop Leadership of the World, and a former Vice President of the United States is a good detail man for softening up potentates

From inside the book

48 pages matching **legislation** in this book

Page 138

Paul Porter became close to Representative Wright Patman (D., Tex.) during the war because OPA legislation had to clear Patman's committee. Porter didn't forget the friendship.

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Congress and tell the client what sort of legislation is needed, and exactly how he should go about obtaining it. Then they shake his hand at the door and send him a bill. Clifford is careful never to approach a Congressman face to face on behalf of a specific client. And even such an experienced legal warhorse as

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Howard R. Kornegay, a North Carolina Democrat who was a member of the House Interstate and Foreign Commerce Committee during his four terms in Congress. Kornegay went on the tobacco lobby payroll to help emasculate legislation requiring

From inside the book

88 pages matching **law** in this book

Page 70

officer Clifford did not participate in the 1968 campaign—although his law partner, former CIA official Thomas D. Finney, helped direct Senator Eugene McCarthy's Presidential bid. And as of mid-1971 Clifford was the chief foreign policy adviser to Senator Edmund Muskie, who he early decided was the most

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painstakingly they argued their case against administrative law. The administrative law process was damned as un-American." Because of the war, the Administrative Procedure Act, their goal, did not get through Congress until 1946. But the end result was exactly what the corporations wanted. *The New York*

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later, a partner chaired a D.C. committee that revised police, court, and jail procedures during situations that result in mass arrests. And Cutler has been a guiding force in the Lawyers' Committee for Civil Rights Under Law, virtually the only surviving white-dominated group pressing for desegregation.

From inside the book

17 pages matching **laws** in this book

Page 42

“I didn’t think it would be terrible to tighten the antitrust laws. This ripped through Cordiner’s defenses so brutally he broke down and agreed the present laws were “amply severe.”

Page 255

can society of magazine editors, and the CIA Information Agency. And he argues that a combination lawyer-lobbyist is vastly more valuable on the Hill than a non-lawyer-lobbyist. “He is trained to interpret laws and provide legal analysis for his client,” Ablard has written. “One who can interpret and analyze

Page 336

not undercut the other. Rather than protesting against all regulation, the industry should draw up a model bill that would establish a sympathetic climate and set forth a preliminary approach.

From inside the book

 government

93 pages matching **government** in this book

Page 6

Washington Lawyer is the man American business depends upon to "subdue . . . and shape" the Federal government.

The Washington Lawyer in recent decades has stepped beyond the attorney's traditional role as legal representative. The

Page 44

the postwar period the Soviets were bargained out of anything."

Dean Acheson had left Covington and Burling in 1941 to reenter government; from August 1945 to June 1947, when the firm was rebuilding its international practice, he served as

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"I'm getting out, Sam, but not for long. I want to make one million dollars, in one year, that's all. Then I'm coming back to the government for the rest of my life."

In 1941, less than a year after leaving the White House, Corcoran encountered the friend again. "Say, Sam," he said, "I've

From inside the book

88 pages matching **federal** in this book

Page 6

concentration, one with the trappings but not the reality of regulation, one which stifles competition in the name of an "orderly" market.

Lee Loevinger, formerly a member of the Federal Communications Commission, now an attorney in Washington, once

Page 31

Burling to scuttle the program. Edward Burling went into Federal court in Oklahoma and obtained an injunction halting a PWA project which conceivably could have cost the holding company a handful of customers. Acheson chuckled in his

Page 161

Federal agencies. He found Corcoran's jauntiness exhilarating, and he shared Corcoran's zest for causes. That was almost forty years ago. Now Rauh sat quietly in the Federal City Club and swished around a glass of bourbon and ice and reminisced about his erstwhile crusader friend

From inside the book

89 pages matching **business** in this book

Page 35

into the business today and put their money into it, thereby making an investment, unless there is some proper protection against fly-by-night companies whereby some irresponsible companies cannot come along with a lot of secondhand planes and cut prices right out from under legitimate operators. A system

Page 156

got to raise the price or shorten the time."

Corcoran stepped from the White House into so thriving a law business that for many months he didn't even bother to open an

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upon what is happening now, because of course Mudge Rose is not that sort of firm. "We are technicians," Randolph Guthrie said. "We are not in the business of affecting government. We work directly with the staff people, not at the high level—we're

From inside the book

52 pages matching tax in this book

Page 148

tion walks around with him, and the career people are wary of him and maybe even resent him a little bit. I've been told he's a damned smart lawyer, and maybe he is, in his special fields. But I never saw any evidence that he knew all that much about tax law. Oh, he could set up the high-level conferences, and get his

Page 309

Lawyer can choose from a vast variety of forums, ranging from the informal office conference to a full-blown court proceeding, or even to Congress.

Given the proper resources—i.e., a rich enough client—a good tax lawyer won't stop until he has exhausted all avenues,

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Service is situated in Washington is undeniably the single most important influence upon the nature of the Washington tax lawyer's practice. Physical proximity to the national office permits rapid transmission of information, personal discussions, readily scheduled conferences and all of the other obvious advantages

From inside the book

87 pages matching **firm** in this book

Page 234

sent his corporation on the East Coast, should he settle there to practice law, and internationally. Pepsi-Cola was in the process of challenging Coca-Cola for what we could call the Soda Pop Leadership of the World, and a former Vice President of the United States is a good detail man for softening up potentates

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Karasik tried to explain away the letter by saying he wrote it while in the Dominican Republic. "I think that when I went down there, I probably had a recommendation, but I am not—I think it was not a firm which I knew personally. I believe I would have characterized it differently if I had known that firm

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belief that individual lawyers with the firm should be free, consistent with the Code of Professional Responsibility, to pursue their own personal and professional goals. Rather than attempting to achieve a unified "position" on any particular matter, the members of this firm encourage each

From inside the book

86 pages matching **firms** in this book

Page 26

practice the city had in those days had grown in response to isolated and highly specialized situations. Right after the Civil War, when the industrial revolution began to boom across America, patent attorneys dominated "Washington Law." (Of the four firms listed in the 1880 edition of *Martindale and Hub-*

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by the Supreme Court, and any lawyer who practices is subject to them. Hence the new rule caused literally dozens of Congressmen-lawyers to withdraw from their firms during the two years after its enactment.

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and Moore. (Wilmer, Cutler and Pickering now serves as the Washington office of Cravath, Swaine and Moore; the two firms even share the same address and phone number in the Washington telephone directory.)

From inside the book

88 pages matching **office** in this book

Page 156

once or just a business phone. To do so, he told people, would be a nuisance. Anyone who really mattered could eventually find him; anyone who couldn't wasn't the sort of insider-client he wanted, anyway. A resentful rival viewed the lack of accommodations from a slightly different perspective. He told journalist

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Lawyer can choose from a vast variety of forums, ranging from the informal office conference to a full-blown court proceeding, or even to Congress.

Given the proper resources—i.e., a rich enough client—a good tax lawyer won't stop until he has exhausted all avenues,

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appointees, so they could better spend their time with the staff."

The fact that the person requesting the interview was a former government official was high automatic entry into his office, Caplin says. "It's a combination of camaraderie and courtesy. You find time for a former official. If a man who used to be

From inside the book

20 pages matching **offices** in this book

Page 65

In the Covington and Burling pecking order, the more senior partners enjoy offices on the seventh and eighth floors of 888 16th Street NW, or the coveted spacious corner offices on the floors below, with two-wall windows. My first two weeks in the

Page 197

Representative Richard L. Ottinger, while in Congress, complained that the "close relationship between the ICC and the railroads is far more than a matter of philosophical affinity. It is a *working* economic and personal relationship, which frequently involves the most insidious possible influence by an industry

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cials with whom he had talked about the \$225 million bail-out "now understand" the deep-rooted nature of the railroad's problem, and were ready to set about correcting them.

As it developed, the Penn Central did not receive the \$225-

From inside the book

89 pages matching **partner** in this book

Page 59

you expect to practice law with him the rest of your life," a senior man said. "It's hard to tell him you've changed your mind when he is already a partner." The selection process is ritualized. One Monday afternoon in mid-June of each year the firm's partners gather in what Charles Horsky calls "Jack Valenti's

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rabbit warren of five *more* townhouses. Now, with seventy-plus lawyers, it has trouble finding enough messenger boys to carry papers around, and associates gripe about having to walk in the snow when a senior partner calls them over for a chat. The growth was steady: three men a year. One quantum jump in size

Page 234

Storn reached an agreement, and the new partner issued an announcement in writing from his suite at the Waldorf-Astoria Towers:

On June 1, 1963, I shall move my residence to New

From inside the book

12 pages matching **associate** in this book

Page 14

industry he represented. Wald told *The Wall Street Journal's* Jonathan Kwitny: "I haven't the slightest doubt that cigarets cause lung cancer. I had to come home every night and face my kids saying, 'Daddy, why do you work for a cigaret company?' "

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there are guidelines: The Washington Lawyer works 1,200 to 1,400 hours a year* that are "billable" to specific clients. The straight-billing rate ranges from \$35 per hour for a very junior associate in a large firm to \$250 for the name members of the name firms. Retain-

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varied enough experience so that you'll have a background in almost anything a lawyer can do in Washington. But rotate from field to field too much, and you'll become a dilettante." One disgruntled former associate who resigned after two years

From inside the book

27 pages matching **question** in this book

Page 61

explaining that corporations have a right to legal representation," a senior partner says. "I'm always getting questions like, 'Will I *have* to represent corporations? Or anyone else who comes along?' One year the question was, 'What, for example, would Covington and Burling do if you were asked to represent

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glabbing for it, chief. Clark McDermans Clifford's look says okay—first-question and I ask it, and the feet swing, and the teepeed hands slowly rise across his chest, and the eyes are with me, unblinking, and is it a smile or the permanent expression of a quizzical listener, the locked-on face that is unrevealing of emo-

Page 326

Regardless of the merits of the attack on Cutler, the students succeeded in dramatizing a question that Washington Lawyers—and those elsewhere—had previously discussed only in the most theoretical terms: What is the lawyer's responsibility to society, as opposed to his responsibility to an individual client?

From inside the book

27 pages matching **questions** in this book

Page 105

ington with "nagging, not-to-be-suppressed doubts" about the validity of the judgments that had put the U.S. into Indochina. Clifford began to pay closer attention at the White House briefings; his questions took on a sharper edge.

In November 1967 Johnson decided to replace Robert S.

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...pany, part of the ... Sterling Products Company, was one person who sought help. The Ross firm had subsidiary and related companies in Latin America, England, and Germany, and the Justice Department's antitrust division had grave questions about some of its overseas

Page 276

Representative Wright Patman (D., Tex.), chairman of the House Banking and Currency Committee. Patman is congenitally hostile to bankers, and Yingling knows little can be gained by serving up witnesses for him to torment with needling questions. Patman loves to preface "questions" with rambling de-